

# **Exhibit G**

TELEPHONIC CONFERENCE  
ENERGIZER BRANDS vs MY BATTERY SUPPLIER, LLC

August 11, 2020

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1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF NEW YORK

3  
4 CASE NO: 1:19-CV-6486

5 ENERGIZER BRANDS, LLC,  
6 Plaintiff,

7 vs

8 MY BATTERY SUPPLIER, LLC,  
9 Defendant.

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13 TELEPHONIC CONFERENCE  
14 IN THE MATTER OF  
15 ENERGIZER BRANDS, LLC  
16 vs  
17 MY BATTERY SUPPLIER, LLC

18  
19 August 11, 2020  
20 12:33 p.m.-1:21 p.m.

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23  
24 Deborah J. Bateman, Court Reporter

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APPEARANCES OF COUNSEL

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1 TELEPHONIC CONFERENCE BETWEEN PARTIES

2 August 11, 2020

3  
4 MS. NAGLE: So thanks for making some time. I  
5 hope you guys both had a good vacation last week. I just  
6 wanted to connect and confer on a couple of items which I  
7 sent you some e-mails on. But I think the first one I  
8 want to -- I don't know that it really requires too much  
9 discussion at this point -- is related to the protective  
10 order.

11 As you saw in my e-mail from before you all  
12 went out on vacation, we are proposing entry of the  
13 Court's -- the form order. We know we had extensive  
14 discussions on this back in the spring. I think we all  
15 expected some guidance from the Court after the May 20  
16 hearing. It has not come yet. And at this stage, you  
17 know, MBS hasn't produced anything yet, and we really  
18 think this -- we need to press this issue, and we think  
19 the form order is sufficient to satisfy what's at issue  
20 in this case.

21 So have you had an opportunity to look at  
22 that, and are you agreeable to that form or not?

23 MR. BERKOWITZ: Just specifically, which judge  
24 does this order come from? There's no -- as far as I

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1 request for specific communications.

2 MR. BERKOWITZ: Right. The way we saw it was,  
3 you know, that we would basically hold off on doing  
4 e-mail until after other documents were produced,  
5 invoices and things like that, and then we would deal  
6 with e-mail in one shot. We'd, you know, agree on some  
7 sort of time frame for staging a list of custodians,  
8 exchanging, you know, search terms, exchanging, you know,  
9 maybe the number of hits, and then doing a production.  
10 That's how we've done it in the past.

11 MS. NAGLE: Yeah. Well, what do you mean by  
12 "exchanging"? Because you have -- there's no -- you've  
13 not asked for any e-mails, specific things from us, so --

14 MR. BERKOWITZ: I'm sure we have requests that  
15 would implicate communi- -- that request communications.  
16 So we have a request that covers communications. So, I  
17 mean, is Energizer going to go perform e-mail searchings  
18 in response to all those?

19 MS. NAGLE: No. But -- so to the extent  
20 you've asked for something, like, asked for  
21 communications that's, like, something very specific, we  
22 have identified the communication and would be producing  
23 it, I mean, subject to wherever we are on objections and  
24 all of that. I mean, this is not a case where either

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1 side has to do a deep ESI dive, and so I think we're just  
2 maybe crossing paths here. But the idea that we're not  
3 doing sort of a massive e-mail search just means that the  
4 parties are not going to search their entire e-mail  
5 system based on keywords. That's not the expectation  
6 here. But if you ask me, for example, for communication  
7 regarding, you know, a specific purchase, I'm going to go  
8 look for that communication and I'm going to produce it  
9 to you. And that does not require that I send you  
10 custodians in advance or date ranges in advance. It's  
11 essentially a self-select. Like, I know where that  
12 document is or where to go for it, and I'm going to go  
13 get it.

14 MR. BERKOWITZ: Right. But that's also not  
15 always possible. You know, we don't know over the past  
16 however many years whether there was a particular  
17 communication or not. I mean, if we say all  
18 communications relating to My Battery Supplier, what's  
19 Energizer going to do with that?

20 MS. NAGLE: We would -- we would do an  
21 internal investigation, as we've done, and figure out  
22 who's had communications with My Battery Supplier.

23 MR. BERKOWITZ: Have you -- you would have  
24 them do a search, and have -- what would --

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1 MS. NAGLE: I mean, Mark, you've asked a lot  
2 of questions about that, and we've interviewed a lot of  
3 people, and that's exactly what --

4 MR. BERKOWITZ: I --

5 MS. NAGLE: -- we've done. We've said, Have  
6 you talked --

7 MR. BERKOWITZ: I don't know that. I'm  
8 asking --

9 MS. NAGLE: We've told you that a couple of  
10 times now. But, yeah, if there's somebody you've  
11 identified, for example, Roger Fong, we would talk to  
12 Roger Fong, and we'd say --

13 MR. BERKOWITZ: Wait.

14 MS. NAGLE: -- "Do you have any" --

15 MR. BERKOWITZ: Somebody we've identified?

16 MS. NAGLE: If it's somebody you've identified  
17 in your initial disclosures, of course, we go talk to  
18 those people. We also go talk to other people we think  
19 might reasonably have the information that you're  
20 seeking, and of course, we ask those people if they have  
21 communications or documents because it's our obligation  
22 to do that. What I'm concerned about is that you're not  
23 doing that.

24 MR. BERKOWITZ: No, no, no.

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1 MS. NAGLE: And I think you've --

2 MR. BERKOWITZ: So -- let's talk it through --

3 MS. NAGLE: -- asked Brock to search his  
4 e-mail --

5 MR. BERKOWITZ: Let's talk it through how  
6 we're both going to do it. So you've identified the  
7 people. You've identified, generally, what you're  
8 looking for in terms of subject matter. But have -- you  
9 know, what's Energizer doing in terms of searching? Are  
10 you just --

11 MS. NAGLE: Okay. Mark, we're getting off --  
12 we're getting very off track here because you haven't  
13 raised this with respect to our requests. I asked for a  
14 meet and confer to go over your requests.

15 MR. BERKOWITZ: And it's a --

16 MS. NAGLE: We have asked for examples --

17 MR. BERKOWITZ: -- common issue.

18 MS. NAGLE: No, it's not really a common issue  
19 actually. And I'm going to keep this call to our issues.  
20 And if you'd like to have a call about your issues, we  
21 can do that. But you have raised the ESI protocol as a  
22 reason you've not produced anything to us to date, and  
23 it's been seven months. And you have had the ESI  
24 protocol for several months with our revisions and have



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1 MR. BERKOWITZ: Okay.

2 MS. NAGLE: -- dates, Mark.

3 I think that now we are done.

4 MR. BERKOWITZ: Excellent.

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6 (Whereupon the meeting ended at 1:21 p.m.)

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COMMONWEALTH OF MASSACHUSETTS

ESSEX COUNTY

I, Deborah J. Bateman, Notary Public, in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing record, pages 1 through 52, inclusive, is a complete, accurate, and true transcription of my stenographic notes taken in the aforementioned matter to the best of my skills and ability.

I witness whereof, I have set my hand and seal this 13th day of August, 2020.



Deborah J. Bateman, Notary Public in and  
for The Commonwealth of Massachusetts  
My Commission Expires: November 2, 2023